

10/4/93
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Date 10/13/93
Signature [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
AUG 25 1993

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code.

You were created [REDACTED] as the [REDACTED] [REDACTED] to provide funds for scholarships and emergencies to descendants of [REDACTED]. On [REDACTED] your name was changed to [REDACTED]. On [REDACTED], your purpose was changed to the establishment of a university whose function is to "explore the ities of the universe." If there is a dissolution of the trust, funds or assets may be granted to [REDACTED]. There is no requirement that your funds will be given to [REDACTED], nor are there provisions for an alternate beneficiary.

Despite repeated requests to do so, you have failed to provide any specific description of activities you will carry out in furtherance of your purposes. You have stated that no university exists at this point other than in the mind of [REDACTED], your trustee. There are no classes, faculty members, or places where instruction is regularly carried on. All of your income to date has been contributed by [REDACTED].

Section 501(c)(3) of the Internal Revenue Code describes, in relevant part, corporations organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations states that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

[REDACTED]

The term 'exempt purpose or purposes', as used in this section, means any purpose or purposes specified in section 501(c)(3), as defined and elaborated in paragraph (d) of this section.

Section 1.501(c)(3)-1(b) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit the purposes of such organization to one or more exempt purposes; and do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(1)(v) of the regulations states that an organization must, in order to establish its exemption, submit a detailed statement of its proposed activities with and as a part of its application for exemption.

Section 1.501(c)(3)-1(b)(4) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal Government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized.

Section 1.501(c)(3)-1(d)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Rev. Proc. 90-27, 1990-1 C.B. 514, section 5.02, states that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement.

Section 509(a) of the Code describes various categories of organizations which are considered publicly supported

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organizations. Among these are organizations which are schools (as defined in section 170(b)(1)(A)(ii) of the Code and the regulations thereunder, and organizations which receive a significant portion of their financial support from members of the general public (as defined in sections 170(b)(1)(A)(vi) and 509(a)(2) of the Code and the regulations thereunder).

Your stated purpose of exploring the ities of the universe is not one that necessarily falls within the permitted purposes set out within section 501(c)(3) of the Code and the regulations thereunder. Your assets are not dedicated to charitable purposes since your trust instrument does not require distribution to a charitable beneficiary upon dissolution. Therefore, you do not meet the organizational test of section 1.501(c)(3)-1(b) of the regulations.

Furthermore, you have not described your proposed activities in sufficient detail to enable us to conclude that you will meet the requirements of section 501(c)(3) of the Code. In fact, you have not provided any description of proposed activities. Thus, you do not meet the requirements of section 1.501(c)(3)-1(b)(1)(v) of the regulations and Rev. Proc. 90-27.

Finally, even if we were to conclude that you qualified for exemption under section 501(c)(3) of the Code, you would be classified as a private foundation because all of your financial support to date has come from your trustee, who is a disqualified person with respect to you, and you are not operating a school.

Accordingly, based on all the facts and circumstances, we conclude that you do not qualify for recognition of exemption under section 501(c)(3) of the Code. Contributions to you are not deductible under section 170 and you are required to file federal income tax returns.

You have the right to protest this ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory

[REDACTED]

judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State officials will be notified of this action in accordance with section 6104(c) of the Code.

You will expedite our receipt of your reply by using the following address on the envelope:

Internal Revenue Service
[REDACTED]
1111 Constitution Avenue, NW
Washington, DC 20224

Sincerely yours,

[REDACTED]
[REDACTED]
Chief, Exempt Organizations
Rulings Branch 2

cc: [REDACTED]

Internal Revenue Service

Department of the Treasury

District
Director

Date: **SEP 25 1986**

Employer Identification Number:

Person to Contact:

Contact Telephone Number:

Refer Reply to:

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954.

The evidence presented indicates that you are a trust formed and adopted on [REDACTED].

The primary purpose for which the trust is organized is to organize and bring into being a trust fund for scholarship, rescue and emergency services for the posterity of [REDACTED].

The primary activities of the trust, as stated in your application for recognition of exemption, will be to invest in growth issues which will mature at or near the time the next generation of posterity members will be ready for college education financing. As the trust expands, the focus of the will be expanded into the areas of rescue and emergency services. The ultimate aim of the trust is to serve the posterity of the [REDACTED]'s, in the stead of public welfare assistance.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organization organized and operated exclusively for charitable, religious scientific or educational purposes, no part of then net earnings of which inures to the benefit of any private shareholder or individual.

In order to qualify under IRC 501(c)(3), an organization must be both "organized" and "operated" exclusively for one or more purposes specified in that Section. If the organization fails to meet either the organizational test or the operational test, it is not exempt (Regulations 1.501(c)(3)-1(a)(1)). The organizational test relates to the rules for governing an organization and the purposes stated in its articles of organization. The operational test relates to the organization's activities.

Section 1.501(c)(3)-1(b)(4) of the Regulations states that "an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders.

In Better Business Bureau v. U.S., 326 U.S. 279 (1945), the Supreme Court stated that the presence of even a single, non-exempt purpose, if more than insubstantial in nature, will defeat exemption under Section 501(c)(3) of the Code, regardless of the manner or importance of the truly exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that if more than an insubstantial part of an organization's activities is not in furtherance of exempt purposes, the organization will not be regarded as exempt.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides, in part, that an organization is not organized or operated exclusively for one or more of the purposes mentioned in Section 510(c)(3) of the Code unless it serves a public rather than a private interest. An organization may not be exempt if it is operated for the benefit of private individuals.

Section 1.501(c)(3)-1(d)(2) of the Regulations provides that the term "charitable" includes relief of the poor and distressed, advancement of education and science and the promotion of social welfare designed to accomplish any of the above purposes.

It has been held that a trust set up for the benefit of an aged clergyman and his wife was not an exempt organization. Despite the fact that the elderly gentlemen was in financial need, this was a private trust, not a charitable trust. Carrie A. Maxwell Trust, Pasadena Methodist Foundation v. Commissioner, 2TCM 905 (1943).

A trust to pay a certain sum to all the individuals enrolled in a certain school on a particular date was held to be a private trust, not a charitable trust. The beneficiaries were a group of identification individuals, Revenue Ruling 57-449, 1957-2C.B. 622.

In *Charleston Chair Company v. United States*, 203 F. Supp. 126 (E.D.S. C. 1962), exemption was lost by a foundation that spent a large part of its funds on a scholarship grant to the son of a foundation trustee.

Similarly, an organization which operated a subscription "scholarship" plan for individuals designated by the subscribers was operated for private rather than public purposes. Revenue Ruling 67-367, 1967-2C.B. 188.

Like the organizations described in the *Carrie A. Maxwell Trust* and in Revenue Ruling 57-449, the beneficiaries of your trust are a group of identifiable individuals, indicating your trust is a private trust. As with organizations described in *Charleston Chair Company* and in Revenue Ruling 67-367, the recipients of the benefits are designated individuals who will be decedents of the principals and trustees of [REDACTED].

Further, we have determined your organization's purposes, as stated in the trust agreement, are not purposes within the scope of Section 501(c)(3). Also, we have found that your trust lacks a proper dissolution clause as required by the Regulations.

Base upon the evidence presented with your application for recognition of exemption, we have determined your organization does not satisfy the organizational and operational tests prescribed in the Regulations.

Accordingly, we conclude that you are not organized and operated for the purposes described in Section 501(c)(3). Therefore, you do not qualify for exemption from Federal income tax under Section 501(c)(3).

You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1680, General Post Office, Brooklyn, NY 11202.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.

If you do not agree with this determination you may protest in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completions.

If we do not hear from you within that time this determination will be considered final and the appropriate State Officials will be notified.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,


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District Director

Enclosure: Pub. 892